

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CLINTON BROWN,

Plaintiff,

v.

CLARK R. TAYLOR, AICP, THE LOS  
ANGELES COUNTY DEPARTMENT OF  
REGIONAL PLANNING,

Defendant.

No. 2:22-cv-09203-MEMF-KS

**[PROPOSED] ORDER GRANTING RULE  
37(a)(5)(B) COSTS**

**[ECF NOS. 137 & 137-1]**

**THIS MATTER**<sup>1</sup> has come before this Court as an objection to the parties' costs by the Plaintiff after this Court denied the Government's Motion to Compel Production of Documents, Set One, as Untimely ("MTC"). The Government's Opposition ("Opp'n") to the Plaintiff's motion in this matter is also untimely.<sup>2</sup> The parties held a meet and confer on the matter pursuant to L.R. 7-3 on February 26, 2024. *See* ECF No. 137 at 6. The Plaintiff filed this matter with the Court on March 3, 2024. *See* ECF Nos. 137 & 137-1. The Court **VACATED** the noticed hearing date of April 4, 2024 on March 12, 2024. *See* ECF No. 139. The Court stated that the Opp'n to Plaintiff's Motion was due on or before April 11, 2024. (original emphasis omitted). Further, that the Plaintiff file a Reply within 14 days of the served Opp'n. Prior to the filing of the Government's Opp'n the

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<sup>1</sup> The Plaintiff's objection was timely & positioned Counsel to move forward with a meet and confer as required by L.R. 7-3 before filing a motion. This matter is procedural & non-dispositive, thus ECF No. 113, although erroneously filed to the District Judge, properly preserved the issue for the parties to meet and confer, according to L.R. 7-3.

<sup>2</sup> *See* Notes of Advisory Committee—1983. "No specific procedures or timetables for raising objections to the Magistrate's rulings on non-dispositive matters are set forth in the Magistrates Act." (<https://perma.cc/25W7-5KJM> at 322)

Plaintiff filed a “Notice [of] Defendants Failure to File Court Ordered Documents [ECF No. 139]” on April 12, 2024. *See* ECF No. 155. The Plaintiff stated in the filing, “If the Court does allow an Opposition to be filed late, then this notice also serves as a notice of No Reply under L.R. 7-10 to whatever the Defendant has to say in the matter.” *Id.* at 2. The Government filed its Opp’n on April 12, 2024. *See* ECF No. 156.

### **Legal Standard**

[The Supreme] Court has identified three types of time limits: (1) jurisdictional deadlines; (2) mandatory claim-processing rules; and (3) time-related directives. *See McIntosh v. United States*, No. 22-7386, slip op. at 5 (U.S. Apr. 17, 2024). Thus, ECF No. 139 is a ‘time-related directive’ in this case. *In any event*, the Government failed, once again, to file a timely response to a Court order. (emphasis added). The Magistrate Judge has the authority to issue further orders to award reasonable costs to the prevailing party. *See Sali v. Corona Reg'l Med. Ctr.*, 884 F.3d 1218, 1225 at B. (9th Cir. 2018).

### **Discussion**

Rule 37(a)(5)(B) states, “If the motion is denied [ECF No. 112], the Court may issue any protective order authorized under Rule 26(c) [*Id.*] and must, *after giving an opportunity to be heard*, [ECF Nos. 113, 137 & 139] require the movant, the attorney filing the motion, *or both to pay the party or deponent who opposed the motion its reasonable expenses* incurred in opposing the motion, including attorney's fees. But the Court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust. *See* Rule 37(a)(5)(B) (alterations & emphasis added).

Given an opportunity to be heard after the denial of the MTC, the Government filed an *untimely* Opp’n, contrary to the Court’s briefing schedule. *Cf.* ECF Nos. 139 & 156-1 at 4, #13. (emphasis added). Thus, “[T]here was no justification for the Government’s failure to attempt to comply with the Court's order.” *Supra*. Therefore, costs are awarded to the Plaintiff in the amount of \$5,504 in opposing the motion. *See* ECF No. 137-1.

**Conclusion**

The Court **ORDERS** Defendant Taylor to deposit \$5,504 into the Court registry in accord with 28 U.S.C. § 2041 within 5 days & **ORDERS** the Plaintiff to perform a withdrawal of the costs, less any Court fees, within 3 days in accord with 28 U.S.C. § 2042.

**IT IS SO ORDERED.**

Dated: April \_\_, 2024

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KAREN L. STEVENSON

**Chief Magistrate Judge**